In the January (1910), number of this Review (8 MICH. L. REV. 204), there was published an article on "The Constitutionality of the Federal Corporation Tax." This article was reprinted in 40 National Corporation Reporter 798. The conclusions there reached are substantially in accord with the view taken by the Supreme Court. R. W. A.

THE RIGHTS OF PASSENGERS IN AN UNREGISTERED AUTOMOBILE.—The State of Massachusetts by statute requires automobiles to be registered, and prohibits the operation of unregistered machines upon any public highway. While this law was in force, a party of persons went riding in an automobile whose registration had expired four days before. While they were in the act of crossing a railroad track, the automobile was struck by a locomotive, and several of the party were injured and one killed. Five actions were brought against the railroad company. There was evidence that the whistle of the locomotive had not been blown nor the bell rung as the locomotive approached the crossing, although a statute required both of these things to be done for the protection of travellers.

The Supreme Court of Massachusetts held that the plaintiffs had no actions against the defendant for negligence, because when hurt they were riding in an unregistered machine. The failure to register the automobile had put them outside the pale of the law of negligence. *Chase* v. *New York Central R. R. Co.* (March 1, 1911), — Mass. —, 94 N. E. 377.

The principle upon which the case was decided was thus stated by the court: "If there is an unlawful element in an act, which in a broad sense may be said to make the act unlawful, this will not preclude recovery unless the unlawful element or quality of the act contributed to the injury, so that, if the act of a plaintiff may be considered apart from a certain unlawful quality that may enter into it, and if so considered there is nothing in it to preclude recovery, the existence of the unlawful quality is of no consequence unless in some way it had a tendency to cause the injury." And this was the application made to the facts in the case: "The operation of the unregistered automobile is deemed to be unlawful in every feature and aspect of it. * * * In going along the way and entering upon the crossing the machine is an outlaw. The operator, in running it there and thus bringing it into collision with the locomotive engine, is guilty of conduct which is permeated in every part by his disobedience of the law, and which directly contributes to the injury by bringing the machine into collision with the engine."

This case sounds like an echo of the old Sunday law doctrine of Massachusetts, according to which it was held that a person riding for pleasure upon the Lord's day, who was injured by the negligence of others, had no right of action, because his own unlawful act contributed to the injury. *Lyons* v. *Desotelle,* 124 Mass. 387. That puritanical rule was finally abolished by statute. But the judicial temperament or habit of thought which originally developed the rule, could not be repealed. The doctrine was congenial to the court; and now, when a new situation arises, to which the old doctrine may or may not be applied, the Massachusetts judicial mind naturally and perhaps

unconsciously slips into the familiar groove. Every court of last resort tends to develop an individuality of its own. In a very real sense judges never die, but sit forever upon the bench from which their opinions were delivered, so that a court changes only by gradually adding new members to its roll, never by dropping old ones.

The principle announced in the case under review would probably be accepted in any jurisdiction as a clear and correct statement of the law. But it has always been recognized that in this class of cases the difficulty lies in the application of the principle. When is the plaintiff's wrongful act to be looked upon as a cause and not as a mere condition of the injury? If the automobile had been registered it would have been of the same size, with the same passengers, in the same place, going at the same speed. How can the mere absence of an entry in a registration book be deemed to have a tendency to cause a collision at a railroad crossing? Seemingly, to no greater extent than the fact that the day happens to be Sunday can be looked upon as the cause of an injury occurring on that day. *Illinois Railroad Co.* v. *Dick*, 91 Ky. 434, 15 S. W. 665; *Philadelphia etc. Co.* v. *Towboat Co.*, 23 How. (U. S.) 209; *Carroll* v. *Staten Island R. R. Co.*, 58 N. Y. 126.

E. R. S.

NATURE OF BENEFICIARY'S INTEREST IN ENDOWMENT INSURANCE POLICY.—The respective rights of the beneficiary in an endowment policy of insurance and of the insured who has in the policy reserved to himself the power to surrender the policy before maturity, furnish the subject for an interesting discussion and decision by the Massachusetts Supreme Court in the recent case of *Blinn* v. *Dame* (1911), — Mass. —, 93 N. E. 601. The case is particularly interesting and noteworthy because, according to SHELDON, J., who delivered the opinion of an apparently unanimous court, there is no reported case bearing directly on the point involved.

The facts of the principal case briefly are these: Warren Dame made application for and was granted a policy of life insurance in the Penn Mutual Life Ins. Co. The policy provided for the payment by the company of $10,000 to the insured, his executors, administrators or assigns on the tenth of July, 1918; or if he should die before that time, then the company agreed to pay the amount of the policy to Irving Dame and Mildred Dame, children of the insured "if they survived the insured (with power to the insured to surrender the policy to the said company at any time); otherwise to the insured's executors, administrators or assigns." Subsequently the insured made a general assignment for the benefit of creditors, sufficiently sweeping to cover the life insurance policy if it were assignable. The action was brought in equity to determine the rights of the assignee to the surrender value of the policy, as against the children named as beneficiaries in the policy.

The court held that the right of surrender reserved to the insured was a valuable property right, which was capable of assignment, even as against the beneficiaries of the policy, and that the assignee for the benefit of creditors was entitled by virtue of the covenant for further assurance which accompanied the assignment, to an execution of any written surrender by Warren